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COMMITTEE ON THE ELIMINATION OF RACIAL DISCRIMINATION

Fiftieth session

SUMMARY RECORD OF THE 1185th MEETING

Held at the Palais des Nations, Geneva,
on Monday, 3 March 1997, at 10 a.m.

Chairman: Mr. BANTON

later: Mr. FERRERO COSTA

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The meeting was called to order at 10.05 a.m.

OPENING OF THE SESSION

1. The CHAIRMAN declared open the fiftieth session of the Committee on the Elimination of Racial Discrimination.

TRIBUTE TO THE MEMORY OF KARL JOSEF PARTSCH, NICOLÁS DE PIÉROLA Y BALTA AND ANDRÉ DECHEZELLES

2. The members of the Committee paid tribute to the memory of Karl Josef Partsch, Nicolás de Piérola y Balta and André Dechezelles, former members of the Committee. They asked the Chairman to convey their condolences to the families of the deceased.

3. At the invitation of the Chairman, the members of the Committee observed a minute of silence in memory of Karl Josef Partsch, Nicolás de Piérola y Balta and André Dechezelles.

STATEMENT BY THE REPRESENTATIVE OF THE SECRETARY-GENERAL

4. Ms. KLEIN (Representative of the Secretary-General) informed the Committee of the new developments that had taken place since its previous session. The process of restructuring the Centre for Human Rights was under way. A number of work packages had been created during the transitional period, including one to assist in the monitoring activities of the five Geneva-based bodies set up under the international human rights instruments and another to look at ways of improving support for those bodies and make pertinent recommendations.

5. Changes had also been made in the area of electronic communications. Since 10 December 1996 the Centre for Human Rights had had a website where it was possible to consult the annual reports of the Committee, the agenda for its sessions and the periodic reports it was to consider. The concluding observations to be adopted at the current session would be added in due course. The issue of the use of new electronic tools, particularly the Internet, for racist and xenophobic propaganda had been among the topics discussed at the seminar held in September 1996 on the implementation of the International Convention on the Elimination of all Forms of Racial Discrimination. The role of the Internet in relation to the provisions of the Convention would also be assessed at a seminar on the Third Decade to be organized shortly by the Centre in cooperation with UNICEF, ITU, NGOs and Internet service providers, with the assistance of the Committee. She was convinced that the Committee would wish to pay attention, as it went about its work, to issues relating to the abuse of the Internet to promote racial hatred.

6. A plan of action had been drawn up to strengthen the implementation of the Convention on the Rights of the Child and should assist the Committee on the Rights of the Child to cope with the enormous workload created by the rapid accession to the Convention of 190 States. Steps had also been taken to strengthen the implementation of mechanisms for sevéral other human rights instruments through the drafting of optional protocols.

7. Ms. Klein also referred to the increase in violence in Rwanda, which in February had caused the death of five United Nations human rights monitors. The High Commissioner had personally visited Rwanda to assess the situation there. The Centre for Human Rights had recently opened field offices in Zaire and Abkhazia and was also preparing to open an office in Colombia. Finally, she reminded the Committee that the High Commissioner for Human Rights would shortly be leaving his post to take up the duties of Minister of Foreign Affairs of his country, Ecuador.

8. Mr. SHERIFIS expressed regret at the departure of the High Commissioner for Human Rights, whose work he had valued, and asked the Representative of the Secretary-General to convey that regret to him. He asked who would replace Mr. Ayala-Lasso and who would be in charge in the interim, and also inquired whether Mr. Fall was still in his post at the Centre for Human Rights.

9. The CHAIRMAN asked the Representative of the Secretary-General to convey to Mr. Ayala-Lasso the regret of all the members of the Committee at his departure and their congratulations on the work he had accomplished.

10. Ms. KLEIN (Representative of the Secretary-General) thanked the Committee for that gesture. She was unable to reply to the question of Mr. Sherifis concerning who would succeed Mr. Ayala-Lasso. Mr. Fall had been assigned to the Department of Political Affairs in New York and his former duties were temporarily being carried out by his deputy, Mr. Zacklin.

11. Mr. de GOUTTES also paid tribute to the work of Mr. Ayala-Lasso and expressed the hope that the Committee would continue to be able to rely on the assistance of the Centre for Human Rights in order to carry out its preliminary information activities on countries subject to an emergency procedure. Right from the outset of its work, the Committee would need to listen to the views of representatives of the Centre in order to assess the situation in such countries.

12. Mr. VALENCIA RODRIGUEZ noted that the procedure for appointing the High Commissioner for Human Rights was set out in General Assembly resolution 48/141.

ADOPTION OF THE AGENDA (provisional agenda item 1)

13. The CHAIRMAN said that he would take it, if there was no objection, that the Committee wished to adopt the provisional agenda as reproduced in document CERD/C/321.

14. The agenda was adopted.

ORGANIZATIONAL AND OTHER MATTERS (agenda item 3)

Programme of work

15. Mr. BRUNI (Acting Secretary of the Committee) informed the Committee that Algeria had requested by note verbale that its report be considered at the fifty-first session of the Committee on account of the overlapping of the

sessions of CERD and the Commission on Human Rights. Neither the Foreign Ministry of Swaziland nor the Permanent Mission of that country in New York had replied to the Committee, which had requested them both in writing and orally to indicate whether a representative of the Government would be present during the consideration of the report of Swaziland scheduled for 18 March 1997. That report should have been considered at the forty-ninth session of the Committee, when Swaziland had not sent a representative. The Committee would therefore have to decide whether it wished to consider the report in the absence of a delegation.

16. Argentina, Cambodia, the former Yugoslav Republic of Macedonia and the Philippines had asked for the consideration of their reports under the review procedure to be postponed until the next session of the Committee.

17. In addition, Cuba, Ethiopia, Lebanon, Libya, the Netherlands and the Niger had indicated in notes verbales that their reports would be submitted shortly. They too had asked for consideration of their reports to be deferred until the fifty-first session of the Committee.

18. About half the countries to be considered under the review procedure had submitted their reports or were about to do so.

19. He added that Cuba, Germany, Mexico and Switzerland had approved the draft amendments to article 8 of the Convention.

20. The CHAIRMAN said the fact that about half the countries concerned had submitted reports or were about to do so was encouraging and showed that the measures adopted by the Committee for the review procedure were working satisfactorily.

21. Mr. RECHETOV noted that many countries were endeavouring to submit their reports despite the difficulties they were experiencing, which showed the importance they attached to the work of the Committee. In particular that applied to the former Yugoslav Republic of Macedonia.

22. Two decisions had been taken by the Committee at previous sessions, one on the procedure for dealing with overdue periodic reports and the other at its forty-ninth session on overdue initial reports. However, it seemed that the latter decision, unlike the former, was not being implemented. For example, Estonia, which had acceded to the Convention in 1991, had still not submitted an initial report. He believed that the Committee should consider the situation of Estonia at the present session. That country was not suffering either public disorder or civil war and could be expected to submit a report. Furthemore, over 300,000 people in Estonia belonged to minorities who did not have Estonian nationality, even though they had been born in the country, and they were not entitled to vote in elections or hold public office. Estonia had submitted a report to the Committee on Human Rights two years previously and it was alleged that it had subsequently harassed the representatives of non-governmental organizations who had attended the presentation of that report. A representative of Estonia was sure to be present at the forthcoming session of the Commission on Human Rights. The Committee could request him to be present during the consideration of his country's situation and, if Estonia did not submit a report on the

implementation of the Convention, the Committee could base its deliberations on the report Estonia was to submit to the Commission on Human Rights. It was essential to show consistency towards all countries in the matter of consideration of reports.

23. Finally, he expressed the hope that the Committee would request the People's Republic of China to submit reports on the human rights situation in Hong Kong after 1 July 1997.

24. The CHAIRMAN pointed out that the Committee's decision on overdue periodic reports had been taken seven years previously and had been endorsed by the General Assembly. Before implementing its decision on overdue initial reports adopted at its forty-ninth session, the Committee had wished first of all to inform the General Assembly in order to make sure that that body did not oppose the decision. It was now open to the Committee to decide which reports it wished to consider at its next session under the new procedure.

25. Mr. ABOUL-NASR expressed the view that it was difficult to deal with initial reports and the other reports in the same way, inasmuch as the initial reports formed the basis for the discussions of the Committee and for its dialogue with States parties and were used for the monitoring of situations. He wondered how it would be possible to consider the case of a country without an initial report.

26. The CHAIRMAN pointed out that the question raised by Mr. Rechetov was nevertheless valid because the Committee had taken a decision on overdue initial reports at its forty-ninth session.

27. Mr. VALENCIA RODRIGUEZ said that, even if the decision taken by the Committee at its forty-ninth session did not necessarily have to be officially endorsed by the General Assembly, the Committee had rightly waited before applying it until the General Assembly had adopted its resolution on the Committee's report, which mentioned the various procedures approved by the Committee, without apparently raising any objections.

28. Mr. RECHETOV pointed out to Mr. Aboul-Nasr that the Committee had already had occasion to consider the situation of a country without having before it an initial report, as in the case of the former Yugoslav Republic of Macedonia, for example. He did not wish to complicate the work of the Committee, but stressed that it should implement the decisions it took, for otherwise it would encourage the negative attitude of those States parties that did not wish to submit a report.

29. Mr. ABOUL-NASR noted that under the provisions of article 9 of the Convention the role of the Committee was to consider reports, not situations. Macedonia was a special case in that it represented an emergency situation.

30. The CHAIRMAN proposed to the members of the Committee that they should comply with the requests of Algeria, Argentina, Cambodia, the Philippines and the former Yugoslav Republic of Macedonia, which wished the consideration of their respective reports to be postponed until the fifty-first session. Since

Algeria had mentioned the fact that the session of the Commission on Human Rights was being held simultaneously with the session of the Committee, it should be understood that the decision concerning that country would not create a precedent.

31. It was so decided.

32. The CHAIRMAN also proposed that consideration of the reports of Cuba, Ethiopia, Lebanon, Libya, the Netherlands and the Niger should be postponed until the fifty-first session of the Committee, on the understanding that the reports concerned should be submitted in good time.

33. It was so decided.

34. The CHAIRMAN announced that the consideration of the periodic report of Swaziland, which had been postponed several times, should take place on the scheduled date, even if necessary in the absence of representatives of the State party. In agreement with Mrs. Sadiq Ali, rapporteur for that country, he said that a notification would nevertheless be sent to Swaziland. He noted the comment by Mr. Chigovera, supported by Mr. Sherifis, that it would be advisable to get in touch with Swaziland before taking a final decision on the consideration of the report of that State party. The report of Cameroon, which had very belatedly submitted a request for postponement to the Committee, would be considered after the report of Belgium.

35. He did not consider it appropriate to postpone consideration of the report of the former Yugoslav Republic of Macedonia, particularly in view of the comments by Mr. Rechetov and Mr. Garvalov.

Question of the participation of members of the Committee in the consideration of certain reports

36. Mr. GARVALOV recalled that at its previous session the Committee had discussed at length the participation of members of the Committee in the consideration of the reports of countries of which they were nationals. It had been decided to continue consideration of that matter at the current session in order to reach a decision. That decision was an important one, for the situation would arise in a number of cases during the fiftieth session.

37. Mr. SHERIFIS noted that it had been decided at the previous session of the Committee to have the matter considered by the persons chairing the human rights treaty bodies in accordance with General Assembly resolution 37/44 (A/51/482, para. 1).

38. The CHAIRMAN said that in his report on the activities carried out since the fiftieth session he had stated that he had submitted to the seventh meeting of persons chairing the treaty bodies the question of the participation of experts serving on the committees in the consideration of periodic reports from States of which they were nationals. The chairpersons had taken the view that experts should not take part in the consideration of the reports of their own countries (A/51/482).

39. Mr. DIACONU pointed out that the principles adopted by the persons chairing the treaty bodies were merely recommendations for the purpose of maintaining the highest standards of impartiality, both in substance and in appearance. There was therefore no absolute rule on the matter and it was for the members of the Committee to decide in the light of their own consciences whether or not it was appropriate for them to participate in any way in the consideration of the report of their own country. Every member of the Committee should have free scope to participate, provided that he did so in an impartial, honest and objective manner. A member could sometimes give the Committee an overall view and more comprehensive information than did the States parties concerned. A ban on participating in the discussions would probably be detrimental to the interests of the Committee.

40. Mr. ABOUL-NASR said he fully agreed with Mr. Diaconu's viewpoint. He was strongly opposed to the recommendation made by the chairpersons, which was not based on any provision in the Convention or the rules of procedure. It was his intention, when the time came, to comment as appropriate on some aspects of the report of his own country, Egypt, concerning the implementation of article 4 of the Convention. Likewise, the other members of the Committee would be able to act as they thought fit in a similar situation.

41. Mr. van BOVEN said that the Committee should not discuss the issue at the present stage. Instead he wanted the Chairman to bring his report to the attention of the other members of the Committee. The bureau should draw up a timetable for the consideration of important questions dealt with by that report, in particular the support services provided by the Secretariat and relations with the other treaty bodies.

42. Mr. RECHETOV said he disagreed with Mr. van Boven. The Committee should continue to discuss the issue of the participation of experts in the consideration of the reports of their own countries, which was a matter of fundamental importance.

43. Mr. FERRERO COSTA expressed the view that the discussion on the participation of members of the Committee in the consideration of the report of their own country was extremely important and relevant for the Committee, since many experts would be in a position to participate in the consideration of the report of their own country. The Committee therefore needed to take a decision. There must be total respect for the principle of objectivity and impartiality and also for the principle of equality between the States having experts on a committee and the other States. The Committee should therefore reach a majority decision, if necessary by taking a vote.

44. The CHAIRMAN noted that the recommendation made at the meeting of chairpersons was not unanimously accepted by the Committee. The question was whether the freedom of each expert should be restricted, in accordance with the recommendation made by the chairpersons, or whether each expert should be given full latitude to make his own decision.

45. Mr. WOLFRUM voiced his strong opposition to the recommendation made by the chairpersons, which was too general and indeed not in keeping with the Committee's practice. Every expert was entitled to take part in the discussions. In some cases the participation of the expert whose country

report was under consideration was necessary for information purposes. Unlike Mr. Diaconu, however, he believed it was unlikely that an expert would be better informed than the State party of which he was a national, and it was the State party and not the expert who was obliged to provide the Committee with the information it needed. It was necessary to ensure that the countries represented by experts and the other countries received equal treatment in the consideration of reports. Each case should be treated on its merits and it was therefore impossible to lay down a general rule.

46. Mr. CHIGOVERA said that there was an urgent need to find a solution once and for all to the issue under consideration, as it recurred regularly. He quoted paragraph 1 of article 8 of the Convention on the Elimination of Racial Discrimination and stressed the importance of the expression "of ... acknowledged impartiality". It should not be forgotten that the Committee was a quasi-judicial body inasmuch as it evaluated the extent to which the States parties complied with the provisions of the Convention. It was important that justice was seen to be done, which meant that no one could be judge in his own case: no expert could be impartial during the consideration of the report submitted by his own country. The integrity of the Committee and of its members was at stake. If his impartiality was not to be questioned, the expert should not participate in the consideration of the report submitted by his country. Nevertheless, he could play a role as consultant to the other members of the Committee. If he took part in the discussions, the principle of acknowledged impartiality laid down in article 8 of the Convention would be violated.

47. Mr. RECHETOV stated that he had just changed his views on the matter and that he would not take part in the consideration of the report of the Russian Federation. Unfortunately he would not be able to express his views on the irresponsible acts that had been committed in certain regions, particularly in the Caucasus. It was a great pity that the fact of being familiar with the situation of a country, and thus being able to criticize it, should be regarded as partiality. If that argument were taken to its conclusion, the fact of being married to someone from a given country, of having worked in a given country or of being of foreign extraction could constitute grounds for a charge of partiality.

48. Mr. de GOUTTES said he was in favour of the position adopted at the seventh meeting of persons chairing the treaty bodies. It was most important that experts were seen to be impartial. The recommendation made by the chairpersons would protect experts against any pressures from their governments, which would no longer be tempted to intervene, and also against the temptation to take too lenient or to zealous a stand. It was necessary to bear in mind the situations that might arise in the future in exceptional cases. Moreover, as Mr. Ferrero Costa had pointed out, there would be inequality and even lack of equity if the countries which had an expert on the Committee were in a more favourable situation than those that did not. It was true that in some international courts, for example regional courts, the judges could participate in the deliberations on matters affecting their own country, but that was because all the States parties had judges at the court. The rule should be for the expert to refrain from participating during the consideration of the report of his country, although the Committee should be able to consult him, particularly on technical matters. If it were not

possible to reach a consensus on the issue, it would have to be accepted that the expert concerned could make a statement setting out his position on the consideration of the report submitted by his country.

49. Mr. VALENCIA RODRIGUEZ noted that the practice of the Committee had been to recommend to its members not to participate in the consideration of the report submitted by their country in order to preserve their independence, impartiality and objectivity. The persons chairing the treaty bodies had simply wished to convert that practice into a recommendation. It was only the provisions of the Convention and the rules of procedure of the Committee that were of a binding nature, and it was not possible to refuse to allow a member of the Committee to make a statement. It would be for the expert concerned to decide whether or not he wished to intervene in the discussion. It would therefore be preferable not to turn the recommendation he had mentioned into a rule.

50. Mr. SHERIFIS expressed the view that the advocates of converting the recommendation into a rule and their opponents both had some valid arguments. An expert could if he so wished invoke the recommendation to justify his position to his Government, but it was not possible to prevent him by majority vote, if indeed there were a majority, from expressing his views on the report of his country or even criticizing it. Since some members of the Committee, whether or not they were a minority, wished to preserve their right to speak during the consideration of the report of their country, it would be preferable to close the discussion on the matter.

51. Mr. GARVALOV pointed out that there was nothing in the Convention or in the rules of procedure of the Committee to prevent an expert from taking part in the discussions or in the drafting of the Committee's observations. He would support the recommendation made by the persons chairing the treaty bodies if it were stipulated that the decision on whether or not to take part in the discussions was a matter for the expert concerned. While he personally had on occasion decided not to participate in the discussion of a particular report, it would be a different matter when the report of Bulgaria, his own country, came to be examined. The expert from the country whose report was being considered could be subjected to special pressures, not only for all the reasons described by the other members of the Committee, but also for political reasons.

52. Mr. YUTZIS said that when the persons chairing the treaty bodies had adopted the recommendation under consideration they had done so in order to guarantee impartiality. Members of the Committee should refrain from taking part in the consideration of the reports submitted by their own countries, for that was the best way to preserve their impartiality. He drew attention to the concept of being seen to being impartial referred to by Mr. de Gouttes. That was a fundamental issue: being seen to be impartial meant being impartial and showing it. It would therefore be appropriate to take into account the recommendation made by the persons chairing the treaty bodies.

53. Mr. van BOVEN said he shared the view that the experts should not participate in the consideration of the reports of the countries of which they were nationals (A/51/482, para. 29), either in public session or in private session. That practice was followed in most of the other treaty bodies, but

he noted that the time had not yet come to make it into a rule. With regard to the argument that the expert from the country whose report was being considered could provide the Committee with information, he pointed out that it was for the States to provide the Committee with the information it needed. Nevertheless, a distinction should be drawn between the consideration of the reports submitted by States of which members of the Committee were nationals and the consideration of communications received from those same States. In the latter case the Committee was called upon to play a judicial role and its deliberations were private. He personally had already taken an active part in the consideration of a communication received from the Netherlands, but he would not participate in the consideration of the report that his country was to submit to the summer session.

54. Mr. Ferrero Costa took the Chair.

55. Mr. SHERIFIS asked Mr. van Boven if he did not think that rules 89 and 90 of the rules of procedure of the Committee were sufficient.

56. Mr. ABOUL-NASR said he was convinced that an overwhelming majority of the members did not wish to amend the rules of procedure of the Committee and that members of the Committee were entitled to make a statement whenever they wished, even during the consideration of the report of the State of which they were nationals.

57. Mr. Banton resumed the Chair.

58. The CHAIRMAN said it was his understanding that the members of the Committee wished to take note of the recommendation made by the persons chairing the treaty bodies but did not wish to lay down any rule at the present stage.

59. Mr. CHIGOVERA expressed his disagreement with the Chairman. He wanted a decision to be taken, if necessary by means of a vote, before closing the debate on the subject.

60. The CHAIRMAN replied that it was not possible to take a decision immediately and that consideration of the matter would continue at the morning meeting on Wednesday 5 March. He invited those who so wished to prepare a draft resolution and distribute it to the other members of the Committee, but pointed out that some of those who were in favour of the recommendation in question would not vote for a resolution that would oblige their colleagues to act against the dictates of their conscience.

The meeting rose at 1.05 p.m.